

# **VILLAGE OF WESTON**

## **MEETING NOTICE & AGENDA**

**of a Village Board, Commission, Committee, Agency, Corporation, Quasi-Municipal Corporation, or Sub-unit thereof**

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Meeting: **ZONING BOARD OF APPEALS**

Members: Brent Montague {chair}, Don Skare, Jim Langkamp, Gil Holcomb, Richard Crump, Greg Falkowski  
{Alternate 1}, and Nick Hemauer {Alternate 2}

Location: **Weston Municipal Center (5500 Schofield Ave); Board Room**

Date/Time: **Wednesday, April 15, 2015 @ 5:00 P.M.**

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- 1. Call to order Zoning Board of Appeals Committee.**
- 2. Certification of Compliance with Open Meetings Law Requirements.**
- 3. Approval of previous meeting minutes [October 14, 2014](#).**
- 4. Public Hearing.**
  - 4.1 [VARI-2-15-1500 – Donald & Cheryl Wild](#): Variance to reduce the Principal Other Side Yard Setback (east sideproperty line) in a RR Rural Residential zoning district. The site is located at 9040 Kersten Road in the Town of Weston, PIN 082-2808-013-0985
- 5. Discussion and Action on Application VARI-2-15-1500.**
- 6. Remarks from Zoning Board of Appeals Committee.**
- 7. Adjourn.**

**This notice was posted at the Municipal Center and was emailed to local media outlets  
(Print, TV, Radio) on Friday, 04/10/2015 @ 4:00 p.m.**

Please note that, upon reasonable notice, efforts will be made to accommodate the needs of disabled individuals through appropriate aids & services. For information or to request this service, contact the Village Clerk, Sherry Weinkauff at (715) 359-6114.

Meeting: **ZONING BOARD OF APPEALS**

Members: Brent Montague {chair}, Don Skare, Jim Langkamp, Gil Holcomb, Richard Crump, Greg Falkowski {Alternate 1}, and {Alternate 2 – vacant}

Location: Weston Municipal Center (5500 Schofield Ave); Board Room

Date/Time: **Tuesday, October 14, 2014 @ 5:00 P.M.**

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## **MINUTES**

### **1. Call to order Zoning Board of Appeals.**

Chairman Montague, Crump, Holcomb, Skare, Langkamp, and Alternate Falkowski were present. Director of Planning & Development Higgins, Building Inspector Tatro, Planning Technician Wehner and Recording Secretary Parker were present. Two audience members were present.

### **2. Comments from the public on committee issues.**

None.

### **3. Consent Items for Consideration.**

#### **3.1 Approve previous meeting minutes from 09/10/2014.**

*\*M/S/P Holcomb/Montague: to approve minutes from 09/10/2014.*

### **4. Public Hearings**

#### **4.1 Public Hearing on Variance Request – VARI-9-14-1490, Gary Kaczmarek, 5711 Ferge Street, Weston, WI 54476, requesting a 5-foot front (street) yard building setback (reduction from 30 feet to 25 feet), to bring the property into compliance with minimum setback requirements, which will allow for the construction of an addition to the home and garage, on property described as: West 1/2 of Lot 11, Block 7, also the west 12.5' of the east 1/2 of Lot 11, of Mylrea Acres Subdivision, in Section 18, Township 28 N, Range 8 East, Village of Weston, Marathon County, Wisconsin. This parcel consists of approximately 21,544 square feet, and is addressed at 5711 Ferge Street.**

##### **4.1.1 Open Hearing and Solicit Public Comment**

Montague opened the hearing.

Mark Reinke, 213 Smith Street, Hatley, Contractor for Gary Kaczmarek, was present in support. Gary Kaczmarek, owner 5711 Ferge Street, was also present in support.

Reinke explained Kaczmarek would like to build an addition onto his home, so that a main level bedroom and bathroom can be located in the home (currently all on the second story). Kaczmarek is also planning a 3<sup>rd</sup> stall added to his garage.

Higgins stated this house was constructed back when the previous setback was 25 feet. Now we have a 30 foot setback minimum, which created this house to be legal non-conforming, as the house is located 25 feet from the right-of-way.

She explained that the additions Kaczmarek is asking for does not exceed the 50% valuation. Tatro stated the current code would not allow for any legal non-conforming structures to be modified without a variance.

Higgins explained with the new proposed zoning code, in the future as long as properties following the code, these situations will not be required to go through variance. She explained they are just asking for the 5 foot front (street) yard setback variance for the existing building.

Higgins explained we have not received any comments from neighbors. Higgins pointed out within the meeting packet was the draft Decision of the Zoning Board of Appeals, as well as a draft Order Authorizing Variance, if this Board chooses to authorize this request.

The proposed addition is within the code.

#### **4.1.2 Close Hearing**

Montague closed the hearing at 5:06 p.m.

#### **4.1.3 Discussion and Action on Application VARI-9-14-1490**

***\*M/S/P Holcomb/Langkamp: to approve Application VARI-9-14-1490, as requested, granting a 5-foot front (street) yard building setback variance (reduction from 30 feet to 25 feet).***

**Roll Call Vote: Langkamp - aye, Skare - aye, Holcomb – aye, Crump - aye, and Montague - aye. Variance granted.**

#### **5. Reports from Staff.**

##### **5.1 Report from Planning & Development Director Higgins**

None

#### **6. Remarks from Zoning Board of Appeals Committee.**

None.

#### **7. Adjourn.**

***\*M/S/P Holcomb/Langkamp: to adjourn at 5:10 p.m.***

Respectfully Submitted,

*Valerie Parker*

Valerie Parker

Recording Secretary



## VILLAGE OF WESTON NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that a public hearing will be held before the Village of Weston Zoning Board of Appeals on **Wednesday, April 15, 2015, at 5:00 p.m.**, at the Village Municipal Center located at 5500 Schofield Avenue, Weston, Wisconsin, to hear comments and concerns related to the following setback variance request:

ETZ-VARI-2-15-1500 – Donald and Cheryl Wild, of 5002 River Bend Road, Weston, WI 54476, requesting an 8-foot, 5-inch variance to the Principal Other Side Yard setback (east side property line), to allow for the continuation of the construction of a home, at 9040 Kersten Road, Town of Weston, where the basement foundation is currently located only 11-feet, 7-inches from the property line. The zoning was RR Rural Residential, which required a 20 foot Principal Other Side Yard setback at the time of building permit issuance. The property is described as: Part of the Southwest  $\frac{1}{4}$  of the Southwest  $\frac{1}{4}$ , Lot 2 of Certified Survey Map #14055, in Volume 62, Page 62, Document #1423491, within Section 1, Township 28 North, Range 8 East, Town of Weston, Marathon County, Wisconsin. This parcel consists of 2.760 acres, and is addressed as 9040 Kersten Road.

Beginning Wednesday, April 1, 2015, the application material will be available for public inspection in the office of the Village Clerk, and will also be available on the Village of Weston website located at <http://westonwi.gov/421/Public-Hearing-Notices>.

Written testimony may be forwarded to the Village of Weston Zoning Board of Appeals, Valerie Parker, Zoning Board of Appeals Secretary, 5500 Schofield Avenue, Weston, WI 54476, or e-mailed to [vparker@westonwi.gov](mailto:vparker@westonwi.gov), **by noon on the day of the public hearing**. All interested persons will be given an opportunity to be heard. Any person with questions or planning to attend needing special accommodations in order to participate should call Valerie Parker, Administrative Specialist, Planning and Development Department, at 715-241-2607.

Dated this 27<sup>th</sup> day of March, 2015

Sherry L. Weinkauff  
Village Clerk

Published as a legal ad in the Wausau Daily Herald on Wednesday, April 1, 2015, and Wednesday, April 8, 2015.

# VILLAGE OF WESTON

## REQUEST FOR CONSIDERATION

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ITEM DESCRIPTION:	Variance Request for Don and Cheryl Wild, at 9040 Kersten Road, Town of Weston (ETZ-VARI-2-15-1500)
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REQUEST PREPARED BY:	Jennifer Higgins, Director of Planning & Development Scott Tatro, Building Inspector Valerie Parker, Administrative Specialist
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REPORT DATE:	Thursday, April 9, 2015
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MEETING/MEETING DATE:	Zoning Board of Appeals (ZBA) Meeting (04/15/2015)
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LEGISLATIVE ACTION:	<input type="checkbox"/> Ordinance	<input checked="" type="checkbox"/> Motion
	<input type="checkbox"/> Resolution	<input type="checkbox"/> Acknowledge

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STAFF RECOMMENDATION:	Recommendation to deny the variance as requested.
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FISCAL SUMMARY:	STATUTORY REFERENCE:
Budget Line Item: _____	Wisconsin Statue: _____
Budget Line Item: _____	Administrative Code: _____
Budgeted Expenditure: _____	Municipal Code: \$95.210 and
Budgeted Revenue: _____	\$95.211.1(1)
	Judicial Ruling: _____

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1. Policy Question: Should the ZBA approve a setback variance to allow the construction continuance of a single-family home, which the foundation was poured 8-feet, 5-inches too close to the east property line, at their property addressed as 9040 Kersten Road?
2. Purpose: The purpose of this request is to allow the property owner to continue the construction of a single-family home, which the foundation was poured 8-feet, 5-inches too close to the east property line, at their property addressed as 9040 Kersten Road.
3. Issue Background: Please also refer to the History document, prepared by Building Inspector, Scott Tatro, on the background of this matter.

Don Wild submitted his building permit and plans for the new home in September of 2013. Though the site drawings did not include dimensions from the proposed house to the property line, the building permit application did indicated the house would be 20 feet from the east property line, which was also the minimum distance allowed in the RR zoning district. Tatro issued Mr. Wild the residential building permit on September 19, 2013.

On October 24, 2014, Tatro received an e-mail from the designer of the home. This e-mail provided Tatro with the heat loss information and additional prints of the proposed home. On October 27, 2014, Tatro reviewed the updated site information he received from the

designer, looking at the revised plans and after going out to the construction site, where the foundation had already been poured, Tatro found the foundation was encroaching into the required setback area and was only 8-feet, 5-inches from the east property line. At the time, Tatro issued a verbal and email notification to stop construction.

Higgins received a phone call on 11/4/14 from one of the neighbors of this property who informed her the contractor was continuing to work on the foundation following the verbal Stop Construction notification. Following this phone call, Tatro posted the site with the written notification.

Mr. Wild is now applying for a variance so that he can continue with the construction of this home.

As you are aware, our new zoning code is now in effect (as of March 18<sup>th</sup>). This property is now zoned RR-2 (Rural Residential 2-Acre), but has the same minimum 20-foot side-yard setback. The reason we are still referring to the previous RR (Rural Residential) zoning district is due to the permit for this home construction being issued back in 2013, when the old zoning code was in existence.

#### 4. Issue Analysis:

A variance authorizes the use or development of a specific site in a manner which is prohibited by the zoning ordinance when a property owner can show unique, localized physical problems which give rise to hardship that can be overcome by varying the application of the ordinance without harming the purpose and intent of the ordinance. The variance procedure allows the impact of general rules to be varied in response to unusual local circumstances without involving the governing body in amendment procedures for each such localized situation.

There are two kinds of variances--use variances and area variances. A use variance is one which permits a use of land other than the use prescribed by the zoning ordinance. Area variances deal with the standards in the zoning ordinances for things such as setbacks, height of structures, and density. The Wisconsin Supreme Court has noted that "variances should be granted sparingly."

Variances can be granted where, owing to special conditions, a literal enforcement of the provisions of the ordinance will result in "unnecessary hardship."

For area variances, the Wisconsin Supreme Court has noted the need to judge the hardship against the purpose of the zoning law. In the case of shoreland zoning ordinances, the Wisconsin Supreme Court recently held that an "unnecessary hardship" is defined as "when the applicant has demonstrated that he or she will have no reasonable use of the property, in the absence of a variance." It is unclear whether this definition would apply in all area variance cases. In earlier cases, the court had defined the circumstances required to exist for the granting of an area variance as "whether compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome."

Decisions on whether or not to grant variances from the zoning ordinance depend on the facts in a given case. The courts have developed additional rules for understanding what is meant by "unnecessary hardship."

For example, in no case may a variance be granted solely as a convenience to the property owner. In one case, a homeowner wished to be granted a variance from the minimum side-yard requirements of the county ordinance in order to build a porch to "enjoy lake living, to accommodate his expanded family, and to increase the value of his land." The court held that none of these reasons was sufficient to justify the granting of a variance based on a practical difficulty or unnecessary hardship. Thus, practical difficulty and unnecessary hardship do not include conditions personal to the owner of the land, but rather to the conditions especially affecting the lot in question.

In other cases, the courts have held that a variance, therefore, runs with the land and not with the applicant for the variance. Self-created hardship cannot qualify as the basis for a variance. In addition, the courts have said that concerns over the most profitable use of property are not proper grounds for granting a variance. Finally, a variance cannot be contrary to the public interest.

Other general rules which board members should keep in mind include:

- The board may not make any decision that is contrary to the purpose and intent of the zoning ordinance. For example, consider an applicant for a building permit in a residence district who finds that the 30-ft. front yard requirement of the ordinance cannot be applied to the particular lot if it is to be used for residential purposes. The lot may be too steep to provide the required yard and still utilize practical construction methods. In this case, the board may review the facts relating to the particular lot and might permit the front yard requirement to be reduced from 30 to 20 feet without destroying the intent of the ordinance. But, the board first must determine that the 20 foot front yard on this single property will not significantly disrupt the appearance of the neighborhood or block the vision of neighbors or conflict with any of the other purposes which support the general setback rule of 30 feet.
- Variances are not changes in the ordinance. They are rather modifications in the application of a provision of the ordinance to a particular parcel of land. In the above example, the ordinance, on its face, still requires a 30-ft. front yard in the residence district. Permission to decrease the yard size to 20 feet extends only to the property which was the subject of the variance.
- A situation that applies generally throughout an area is not treated as a variance. For example, suppose a group of property owners adjoining the homebuilder in the above example applied for a variance based on the same reason. Such matters should be handled through an amendment to the zoning ordinance and not by wholesale application of the discretionary power of the board of zoning adjustment/appeals. There is no basis for granting a variance from the provisions of a zoning ordinance unless a particular parcel of land represents peculiar and special conditions.
- Unnecessary hardship must be proven. There is no hard and fast definition of "unnecessary hardship." A margin of discretion is left to the board of appeals. The burden of proving an unnecessary hardship rests upon the applicant, and without such proof, a variance must be denied. The hardship must also be created by the ordinance. If the hardship is caused by actions of the owner, the applicant, or some other person, relief by means of variance may not be granted. Such a situation would arise where hardships result from improvements made in violation of the zoning ordinance, either willfully or innocently, in which case a variance cannot be granted.

To apply for a variance, an applicant has the burden of proof to demonstrate that all of the three criteria defined in state statutes 1) Unnecessary Hardship, 2) Unique property limitations, 3) No harm to public interests are met. Staff does not feel that Mr. Wild has accomplished this in his application. The hardship was not created by the ordinance, it was caused by the owner and contractors own actions. For this reason, Planning and Development Staff is not in support of granting the variance.

The Town of Weston met to discuss this during their March Board meeting. Building Inspector Tatro was present at this meeting to answer any of their questions and Planning & Development supplied the Town with the application materials provided by Mr. Wild. At this meeting, the Town Board took action to recommend denial of the variance to the Village ZBA. I anticipate Town Chairman Olson will be in attendance at the meeting to voice the Towns opposition.

Staff is also aware that a neighboring property owner plans to attend in opposition and has been in contact with staff since the issue came to our and their attention.

5. Fiscal Impact: None – Village, Unknown - applicant

6. Statutory Reference: §62.23(7)(e)

7. Prior Review: None.

8. Attachments:

- Variance application materials
- Draft Decision of the Zoning Board of Appeals

9. Recommendation following Staff Review:

To apply for a variance, an applicant has the burden of proof to demonstrate that all of the three criteria defined in state statutes 1) Unnecessary Hardship, 2) Unique property limitations, 3) No harm to public interests are met. Staff does not feel that Mr. Wild has accomplished this in his application. The hardship was not created by the ordinance, it was caused by the owner and contractors own actions. For this reason, Planning and Development Staff is not in support of granting the variance.

Staff feels this was a self-induced hardship and by granting a variance we would be setting a precedent. Staff recommends denial of the variance, and the owner should be required to move the foundation.

10. Policy Alternatives:

- Approve the request as submitted. – Please note an Order Authorizing Variance will need to be drafted, signed and recorded at Marathon County Register of Deeds.
- Deny the request.

11. Legislative Action: Motion to deny the variance as requested.





**DECISION OF THE ZONING BOARD OF APPEALS,  
VILLAGE OF WESTON, WISCONSIN**

Application/Petition #: **ETZ-VARI-2-15-1500**

**FINDINGS OF FACT**

Having heard the testimony and considered the evidence presented, the Board determines the facts of this case to be:

Filing Date: **02/24/15**

Affidavit of publication /posting is on file.

Hearing Date: **April 15, 2015, at 5:00 pm**

1. The applicant is (name and address): **Don and Cheryl Wild, 5002 River Bend Road, Weston**
2. The applicant is the owner of the following described property which is the subject of the application: **9040 Kersten Road, Weston WI, 54476**
3. At the time of the variance request, the property was **zoned RR (Rural Residential)**. Previous use(s) of property was **unknown**.
4. The property includes a nonconforming structures/use described as....**The applicant constructed the residential building foundation in 2014 in violation of the building setbacks for an RR lot. The east side of the building foundation was found to be too close to the east property line and did not match the setbacks listed on the building permit application. The minimum Principal Other Side Yard Setbacks in the RR Zoning District is 20 feet. The building foundation was placed only 11-feet, 7-inches from the east property line.**
5. Based on staff's research of this property, it does not appear the property has ever been the subject of a prior appeal, variance or conditional use request.
6. The applicant proposes (brief project description/attach plans): **The applicant would like to continue with the construction of a single-family home and on the foundation which was already poured in 2014. In order for the continuation of this home construction, the applicant is requesting an 8-foot, 5-inch variance to the Principal Other Side Yard setback (east property line). A verbal and email notice was given by Building Inspector Tatro on 10/27/14. The property was officially posted with an *Official Municipal Notice of Violation* on 11/4/14 when Director of Planning & Development/Zoning Administrator Higgins received a phone call from a neighbor alerting staff that the contractor had continued to work on the foundation after the initial notification on 10/27/14.**
7. The applicant or appellant requests:
  - ☒ A variance...under Section 95.211.1(1) of the ordinance. **To allow for the continuation of a home to be constructed on existing new foundation with reduced setbacks.**

The features of the proposed construction and property that relate to the grant or denial of the application or appeal are (refer to the language/standards of the ordinance):

**Per the chart known as Sec. 95.176.1 the RR zoning district has a minimum principal other side yard setback of 20 feet.**

## **CONCLUSIONS OF LAW**

Based on the above findings of fact the Zoning Board of Appeals concludes that:

Variance – The variance does/does not meet all of the following tests:

1. Physical Conditions v. Convenience: **Unnecessary hardship exists when compliance would unreasonably prevent the owner from using the property for a permitted purpose (leaving the property owner without any use that is permitted for the property) or would render conformity with such restrictions “unnecessarily burdensome.”**

**While there are physical conditions that now exist, with the already poured foundation in place, the applicant was aware of the 20-foot minimum principal other side yard setback (which the building permit application (TADDB-11-13-4921), dated 09/20/2013, indicated the left side yard would be 20 feet from the property line.**

2. Unique v. General Conditions: **Unnecessary hardship must be due to unique physical limitations of the property such as steep slopes or wetlands that prevent compliance to the ordinance. No unique limitations exist on the property in the proximity of the home site that would prevent the home being set at the 20 ft setback required.**
3. Absence of Precedent: **If this variance is granted, a precedent would be made, where any future builders/property owners who build within the setbacks (whether intentional or unintentional) would request the same approval, which goes against the purpose to setback requirements within our zoning code.**
4. Absence of Detriment: **The approval of this variance may create a detriment to the adjacent eastern property, as the current eastern adjacent property owner has filed an official complaint with the Planning & Development Department, requesting that the applicant be required to follow the minimum 20-foot principal other side yard setback as they did when their home was constructed.**
5. Conditions not Created by Appellant: **The conditions of this matter were created by the appellant.**
6. The Purpose of the Variance is not Based Exclusively upon a Desire to Make More Money Out of the Property: **The purpose of the variance is to allow the applicant to continue the construction of their home, which they plan to move in to in the future.**
7. The Alleged Difficulty or Hardship is Caused by this Ordinance, and has not been Created by any Persons Presently having an Interest in the Property: **The Ordinance has been in place prior to the start of the home foundation construction. Owner was aware of the minimum setbacks, so this hardship was caused by the Appellant, not the Ordinance.**
8. The Granting of the Variation will not be Detrimental to the Public Welfare or Injurious to other Property or Improvements in the Neighborhood in which the property is located: **Though an approved**

**variance may not pose a detriment to the public welfare or injurious to other property or improvement in the neighborhood, the property owner adjacent to the east side of this property has filed a complaint requesting the applicant follow the same building setbacks as were imposed on them when they constructed their home.**

9. The Proposed Variation will not Impair an Adequate Supply of Light and Air to Adjacent Property, or Substantially Increase the Congestion of the Public Streets, or Increase the Danger of Fire or Endanger the Public Safety, or Substantially Diminish or Impair Property Values within the Neighborhood. **No this will not.**
10. The Zoning Board of Appeals may Impose Such Conditions and Restrictions upon the Premises Benefitted by a Variance as may be Necessary to comply with the Standards Established in this Section.

### **ORDER AND DETERMINATION**

On the basis of the above findings of fact, conclusions of law and the record in this matter, the Zoning Board of Appeals orders:

Variance – The requested variance is denied/granted/granted-in-part subject to the following conditions:

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The zoning administrator is directed to issue a zoning permit incorporating these conditions and certifying by the petitioner/applicant's signature that he/she understands and accepts the conditions.

Expiration of permit. Any privilege granted by this decision must be exercised within six months of the date of this decision after obtaining the necessary building, zoning and other permits for the proposed construction. This period will be extended if this decision is stayed by the order of any court or operation of law.

Revocation. This order may be revoked by the zoning board of appeals after notice and opportunity to be heard for violation of any of the conditions imposed.

Appeals. This decision may be appealed by a person aggrieved by this decision or by any officer, department, committee or board of the Village of Weston by filing an action in certiorari in Marathon County Circuit Court within 30 days after the date of filing of this decision. The Village of Weston assumes no liability for and makes no warranty as to reliance on this decision if construction is commenced prior to expiration of this 30-day period.

Village of Weston Zoning Board of Appeals

By: \_\_\_\_\_  
Brent Montague, Chairperson

Attest: \_\_\_\_\_  
Valerie Parker, its Secretary

Dated: \_\_\_\_\_  
Filed: \_\_\_\_\_

### **History of the Don Wild Building permit issuance for both his new detached garage and home.**

On September 25, 2013, Mr. Don Wild applied for a building permit to build a large garage on his property at 9040 Kersten Road, in the Town of Weston. At this time I informed him that he could not build an accessory use structure without a primary use structure on the property (meaning a home). I also told him the regulations required that the garage could only be 60% of the foot print of his home. If it architecturally matches the principal building in his RR (Rural Residential) zoning district, it could be as large as 150% of the home.

He told me they were going to build the home but he was in a hurry to build the garage first, as he needed to store his boat for the winter, which he had over in Lake Michigan. So we agreed that if he were to apply for the house building permit along with the garage permit, he would be able to build the garage first then the home would be built first thing in the spring.

On September 30, 2013, I issued a permit (TAADB-11-13-4921) for the detached garage with the understanding that Mr. Wild would be building his new home the following spring. He would supply preliminary drawings and an application for the new home permit before the garage would be built. On November 19, 2013, Mr. Wild was issued the permit for his new home with the submission of his preliminary plans and applications.

Though his site plan submitted did not have dimensions of the distances for lot lines, his Wisconsin Uniform Building Permit Application that he submitted indicated what the setback of the home was going to be at. Mr. Wild was well aware of both the setbacks required as well as the zoning district that his property was in. We had discussed this when he came in for the building permit for the detached garage. With this preliminary plan and application he paid for the building permit and it was issued. He was given the permit as well as the permit card that clearly stated on it the setbacks of the home. That fall the garage was built and we did not hear from Mr. Wild about the actual house plans all winter or the next spring of 2014.

On July 2, 2014, I sent Mr. Wild an email asking him what the status of his new home was. He replied "we are heavy into the planning stages" he also stated "their plans are to finish the project by snowfall this year".

On August 4, 2014, I sent Mr. Wild yet another email, per the request of Town Chairman Milt Olson, asking the status of the house building project. Mr. Wild's response was they had "met two weeks ago again with his architect and made changes to the plans". He again stated they "intended to be underway and enclosed before cold weather"

On Friday, October 24, 2014, at 3:16 p.m., Mr. Wild's architect sent an email to me with the final drawings and heat loss calculations. I was out of the office all day that day, and did not open the email until the following Monday, October 27, 2014. That morning I had several inspections to perform, one of them out on Kersten Road, just down from Mr. Wild's property. That is when I noticed they had already started the footings and some foundation walls; and it appeared they were close to the property line. I then went right back to the office and opened the plans that were sent to me, I saw the setback on the new plan was 12 feet from the east lot line. Knowing that this was wrong, I went out to Mr. Wild's building site and verified that they had set the house too close to the lot line. I then told the contractor of the error. After this, I went to my office at 12:06 p.m., I sent Mr. Wild an email informing him of this

issue, and that I was going back to the site to tell his contractors not to proceed any further until the structure was relocated.

I also emailed Mr. Wild's architect about this error, and he replied that "I was notified by Don that the site setback from the lot line was 10 feet". I then sent the architect a copy of the building permit application showing that Mr. Wild had indicated the house would be at the 20-foot setback.

Mr. Wild and I had talked about what could be done, he was informed that he would need to relocate the home. He told me he might be able to get additional property from his neighbors, that way it would meet the setback. Once again he was told that the home was too close to the line and work was to stop.

On Tuesday, November 4, 2014, Jennifer Higgins was notified by the Wild's neighbor that the contractors were still working on the footings & foundation. After this notification, I went to the site once again, and this time after telling the contractors to stop working, I then placed 2 violation notices on the site.

Respectfully,

Scott Tatro  
Building inspector

DO NOT REMOVE

# OFFICIAL MUNICIPAL NOTICE OF VIOLATION

LOCATION: 9040 Kersten Road Town of Weston

☐ LACKING

PERMIT

☐ NEED FOR

INSPECTION

☐ EXPIRED

PERMIT

☐ PREMISES HOUSEKEEPING

☐ UNFIT FOR HUMAN OCCUPANCY

☐ EROSION CONTROL PERIMETER MEASURES:

☐ ROCK DRIVEWAY:

☐ INSTALL

☐ INSTALL

☐ MAINTAIN

☐ MAINTAIN

SEDIMENT CLEANUP:

☒ OTHER: \_\_\_\_\_

☐ STREET & SIDEWALK

VIOLATION OF ZONING SETBACKS

☐ ADJOINING PROPERTY

## ACTION:

☐ CONTACT INSPECTOR: ☐ NOW ☐ AFTER CORRECTIONS

☐ CORRECT: ☐ NOW ☐ BY THE END OF THE DAY (TRACKING CLEANUP)

☐ BY THE END OF THE NEXT WORK DAY (SEDIMENT CLEANUP)

☐ IN 72 HOURS (EROSION CONTROLS)

☐ CORRECT BY:

☒ STOP ALL WORK ☐ EXCEPT CORRECTIONS

**FAILURE TO COMPLY SUBJECTS YOU TO APPLICABLE FINES AND PENALTIES**

Municipal Inspector: \_\_\_\_\_ Phone: 715-241-2620 Date: 11/4/14

## Valerie Parker

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**From:** Jennifer Higgins  
**Sent:** Tuesday, November 4, 2014 9:31 AM  
**To:** Amy Allen  
**Cc:** Milton Olson (kamolson@frontier.com); Scott Tatro; Valerie Parker; Daniel Guild; Loren White; Jared Wehner  
**Subject:** RE: Zoning Violation

Good morning Amy,

Thank you for the voicemail and the email. The Building Inspector, Scott Tatro, is already aware of the situation. The owner and the contractor were notified verbally of the setback error on Monday, October 27<sup>th</sup> when Mr. Tatro completed his foundation inspection. They were also given a verbal stop order until the situation could be remedied. The building inspector had delayed posting the stop order since the owner was going to talk to a neighbor about buying additional land to meet setbacks. The owner was aware at that time that the foundation would need to be removed if they couldn't remedy the situation with a land sale. Being that you and your husband are the neighbors he was supposedly speaking to, Mr Tatro will be posting a stop work order on the property today. They will be notified they will need to remove the foundation and reinstall approximately 8 feet to the west at the required 20 ft setback.

Please let me know if you have any further questions or concerns.  
Jennifer

### JENNIFER HIGGINS

*Director of Planning & Development*  
Village of Weston, WI  
5500 Schofield Avenue, Weston, WI 54476  
Phone: 715-241-2638 | Cell: 715-573-9785 | Fax: 715-359-6117  
Email: [jhiggins@westonwi.gov](mailto:jhiggins@westonwi.gov) | [jhigginsvow@facebook.com](mailto:jhigginsvow@facebook.com)  
Schedule appointments with me at <http://doodle.com/vowjhiggins>  
Visit us on the web at [www.westonwi.gov](http://www.westonwi.gov)

---

**From:** Amy Allen [mailto:AAllen@Wausaufs.com]  
**Sent:** Tuesday, November 4, 2014 7:48 AM  
**To:** Jennifer Higgins  
**Subject:** Zoning Violation

Dear Jennifer Higgins:

This letter is to file an official complaint on an encroachment violation of setback requirements for rural residential zoning requirements in Weston. On October 31<sup>st</sup>, we were notified of the possible violation at address: 9040 Kersten Rd., Weston WI after the foundation was dug and poured. We consulted with Michael Tesch (a local builder) and he confirmed the setbacks have been violated.

We would appreciate your assistance in rectifying this matter as soon as possible. We did confirm that the setbacks required when we built our home are the very same that are in place today (20 feet per side yard setbacks) and we are asking that the same ordinance that we were required to follow back then are still being enforced today.

Please contact us as soon as possible with actions that will be taken to rectify this situation.

Sincerely,

Elmer & Amy Allen  
9160 Kersten Rd.  
Weston, WI  
(715) 842-5792



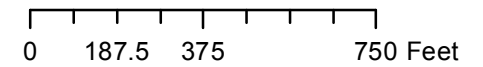
# Town of Weston Extraterritorial Zoning




## Official Zoning Map


Map Date: 03/31/2015

County Board Approval Date: 03/18/08



## Legend

 9040 Kersten Road

 Parcel Boundaries

## Zoning Districts

 M-1

 R-1

 R-2

 R-E

 ROW

 RR

 RR10

 SR



**Variance  
Application**

Planning and Development  
Village of Weston  
Date: ~~11/26/2014~~ 02/24/15 <sup>VP</sup>

Permit No.: ETZ-VARI-2-15-1500

Payment: ☒ Cash ☒ Check No. 2075



5500 Schofield Avenue  
Weston, WI 54476  
(715) 359-6114

**Variance**

\$400.00 FEE ✓

[48/4890]

**-- ALL FIELDS MUST BE FILLED OUT TO BE PROCESSED PLEASE PRINT LEGIBLY --**

**Applicant Information:**

Business Name: \_\_\_\_\_  
Contact Name: Donald & Cheryl Wild  
Mailing: 5002 River Bend Rd  
Address: Weston, Wi. 54476  
Phone Number: (715) 613-3289  
Email Address: wildseasii@gmail.com

**Owner Information:**

Business Name: \_\_\_\_\_  
Contact Name: same  
Mailing: \_\_\_\_\_  
Address: \_\_\_\_\_  
Phone Number: \_\_\_\_\_  
Email Address: \_\_\_\_\_

Applicant is: ☒ Owner ☐ Agent ☐ Other: \_\_\_\_\_

**If applicant is not the owner, a Letter of Authorization from ALL PROPERTY OWNERS must be provided.**

**Property Information:**

Property Site: 9040 Kersten Rd PIN: 082-2808-013-0985  
Address: Weston, Wi 54476 Parcel Size: 2.76 Acres  
Acquisition Date: 01/28/2013 Existing Zoning: RR (old) / RR-2 (new)

Existing Use of Property: Was vacant building lots for home sites. Detached garage was built in 2013. Home to be constructed now.

Have there been previous applications for variances been filed in connection with these premises? Explain.  
no

**Reason request:**

Hold "Ctrl" to select multiple items

- Reduction in Yard Requirements
- Insufficient Lot Area
- Insufficient Lot Width
- Reduction in Setback Requirements
- Same Off-Street Parking Facilities for Two of More Uses
- Reduction In Off-Street Loading Facilities

**Please provide the following on separate documents:**

- ☒ One copy of a registered surveyor's plat of survey or legal description
- ☒ In detail, state the variance request and reasoning regarding the aforementioned selected item. Explain why the variance is necessary and why the request is not considered a self-induced hardship.

I hereby depose and say that all the above statements and all accompanying statements and drawings are correct and true.

Signature:  Date: 11/26/2014

**APPLICANT ATTENDANCE AT THE HEARING IS MANDATORY.**

**Variance Application  
Review**

Planning and Development  
Village of Weston  
Date: 02-24-15

Permit No.: ETZ-VARI-2-15-1500

Payment: ☐ Cash

☒ Check No. 2075



5500 Schofield Avenue  
Weston, WI 54476  
(715) 359-6114

Variance Requested: Requesting an 8'5" Side-yard (east) Setback variance to  
allow them to continue with the construction of their home. The existing  
foundation is 11'7" from the property line. The current setback requirements  
for side yard is 30'.

Hearing Notice Published in WDH on 04-01-15 and 04-08-15

Hearing Notice Mailed to Surrounding Property Owners on 04-02-15

Forwarded to the Zoning Board of Appeals on: 04-10-15

Public Hearing Date: 04-15-15

Application: ☐ Approved ☐ Denied

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Chairperson Signature

Date submitted to Register of Deeds: \_\_\_\_\_

Document Number: \_\_\_\_\_

Date Recorded: \_\_\_\_\_

The property at 9040 Kersten Road was purchased by my wife and I in January of 2013 for the purpose of constructing a heated garage to store our boats and extra personal belongings that do not fit at our permanent residence on River Bend Road. The longer term plan was to eventually build our retirement home on the property as we got closer to our retirement projecting that to be in the next 10-12 years.

As we began the process to get the necessary permits to build the garage on the property, we were informed by Scott Tatro that we would need to build a primary structure on the property in order to be allowed to build the garage. We were also told that the secondary building could be no larger than 60% of the primary structure. The garage space needed was a minimum of 1800 sq ft so that would make the primary home requirement needing to be 3000 sq ft or larger. Building a retirement home larger than our current home wasn't desirable but as we found out this code, we adjusted our home plans to satisfy the >3000 sq ft requirement. I looked up the zoning codes and found in Sec.95.154 (4)a. that In RTF, R1, R-2, R-3, R-4 and R-5 Districts the floor area is limited to a maximum of 60% of the dwelling unit's footprint (excluding attached garage). The detached garage must architecturally match the principal building in color, building materials and style.

With that confirmation I followed through and looked up what the requirements for building setbacks needed to be in these zoning districts. That requirement listed in Article XI. District Regulations, Division 1. Generally Sec.94.174 Zoning district numerical regulation shows that Residential single family R-1 and R-2 setback side yard to be 8 ft.

With this information we paid for the permits and built the garage in the fall of 2013. Now following the requirement to build the primary structure, we began that building in late summer 2014. The home was positioned on the remaining property to stay outside the wetland high mark to the west and be out of the front area of the lot where water runs across from the neighboring property to the east when it rains. After the foundation was poured and the first inspection occurred, the determination was that the foundation was less than 20 feet from the side yard property line and construction was halted. The property is not zoned R-1 as we assumed, but RR and that brings us to the dilemma that we are in need of solving.

We are requesting that the town zoning board consider granting us a variance to resume construction of the home at 9040 Kersten Road with a reduced East side property setback of 11 ft. The home was placed at 12 ft from the property line 4 ft farther than the assumed 8 ft minimum distance and after resurveying the property, the actual distance is 11 ft 7 inches.

We believe that no adjacent property owner is being harmed or encroached upon by granting this variance. The nearest adjacent building is greater than 100 ft to the east of the property line and therefore 110 ft minimum from our foundation. Our building lies within the existing property lines.

LRS10801  
LRS108I

Land Records  
Browse

3/03/15  
13:16:53

PIN 082 2808 013 0985 Town of WESTON  
Parcel 41 012808 011 006 00 00 Status: **ACTIVE**  
Adr 1 9040 KERSTEN RD SCHOFIELD 54476 0000  
Own 1 WILD CHERYL L P

Parcel Descriptions:

1 Description(s) on File

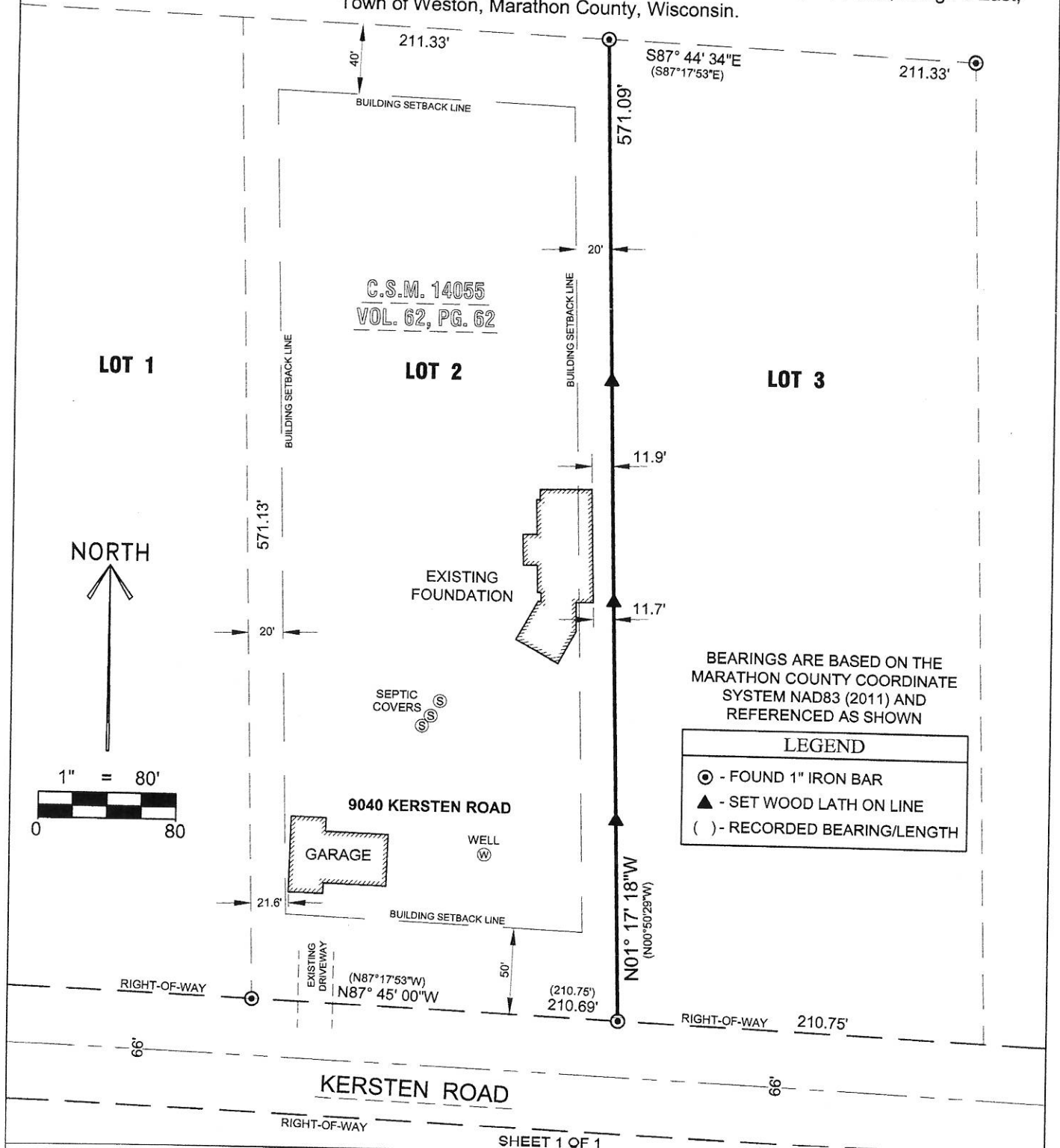
Year	Acres	Front	Depth	Flood Line	Description
2005	2.760				
					1 SEC 01-28-08
					2 PT OF SW 1/4 SW 1/4 - LOT 2
					3 CSM VOL 62 PG 62 (#14055)
					4 (DOC #1423491)

F2=Assessments

F3=Exit F4=Prompt F7=Previous F8=Next F24=More

# EXHIBIT MAP

Of the East line of Lot 2 of Certified Survey Map Number 14055 as recorded in Volume 62 of Certified Survey Maps on Page 62 located in part of the Southwest 1/4 of the Southwest 1/4 of Section 1, Township 28 North, Range 8 East, Town of Weston, Marathon County, Wisconsin.



**RIVERSIDE LAND SURVEYING LLC**  
6304 KELLY PLACE WESTON, WI 54476  
PH 715-241-7500 - FAX 715-355-6894  
email - mail@riversidelandsurveying.com

**DRAWN BY**  
M.F.L.

**DATE**  
DECEMBER 10, 2014

**CHECKED BY**  
K.J.W.

**PROJECT NO.**  
2245

**PREPARED FOR: DONALD & CHERYL WILD**



14055

**MARATHON COUNTY CERTIFIED SURVEY MAP**

OF PARCEL 1 OF CERTIFIED SURVEY MAP NUMBER 9819, RECORDED IN VOLUME 40  
OF CERTIFIED SURVEY MAPS, PAGE 42; LOCATED IN THE SOUTHWEST 1/4 OF THE  
SOUTHWEST 1/4 OF SECTION 1, TOWNSHIP 28 NORTH, RANGE 8 EAST, TOWN OF  
WESTON, MARATHON COUNTY, WISCONSIN. NOTE "A"

**NOTE "A"**

WETLAND INVENTORY MAPS SHOW SPOT SYMBOL  
INDICATING SMALL OR LOCALIZED WETLAND AREA.

**NOTE "B"**

100 YEAR REGIONAL FLOOD ELEVATION OF 1207.31' DERIVED FROM  
FLOOD PLAIN STUDY BY MARATHON TECHNICAL SERVICES, LLC; SAID  
STUDY BASED ON FIELD ELEVATION SURVEY PERFORMED BY LHM  
SURVEYING CONDUCTED IN APRIL, 2005.

WEST 1/4 CORNER  
SECTION 1-28-8  
PK NAIL (FOUND)

NORTHWEST CORNER  
SW1/4, SW1/4

**12059**  
**THERS**  
**147**

NO. 11 CHANE

**C.S.M.**  
**ATTED**  
**VOLUME**

SEE NOTE "A" ABOVE  
REGARDING WETLANDS

☐ UNCLASSIFIED  
☐ SECRET  
☐ CONFIDENTIAL  
☐ OTHERS

SOUTHWEST CORNER —  
SECTION 01-28-8  
SURVEY MARKER P IN  
(FOUND)

**APPROVED FOR RECORDING  
UNDER THE TERMS OF THE  
MARATHON CO. LAND DIVISION  
REGULATIONS**

BY [Signature]  
DATE September 20, 2005

**MARATHON COUNTY CONSERVATION,  
PLANNING & ZONING DEPARTMENT**

MARCH 10, 2005  
REVISED JULY 19, 2005

THIS INSTRUMENT DRAFTED BY LAVERNE H. MOSHER

**SHEET 1 OF 2 SHEETS**

#20-05

UNPLATTED	LANDS	OWNED	BY	OTHERS
1	2	3	4	5
6	7	8	9	10
11	12	13	14	15
16	17	18	19	20
21	22	23	24	25
26	27	28	29	30
31	32	33	34	35
36	37	38	39	40
41	42	43	44	45
46	47	48	49	50
51	52	53	54	55
56	57	58	59	60
61	62	63	64	65
66	67	68	69	70
71	72	73	74	75
76	77	78	79	80
81	82	83	84	85
86	87	88	89	90
91	92	93	94	95
96	97	98	99	100

BEARINGS REFERENCED TO THE WEST LINE OF THE SOUTHWEST 1/4  
OF SECTION 1, T 28 N, R 8 E. RECORDED TO BEAR N 00°57'22"W.

**SCALE**     1" = 200'

### LEGEND

- — SET 1" O.D. X 18" ROUND IRON BAR  
WEIGHING 2.670 LBS/LINEAL FT.
- — FOUND 1.315" O.D. IRON PIPE

REVIEWED AND APPROVED  
UNDER CHAPTER 16 OF  
TOWN STATUTES

BY M. L. R. R. R.  
DATE 9-6-05

REVIEWED AND APPROVED  
UNDER CHAPTER 74 OF  
VILLAGE ORDINANCE

BY Al Brown  
DATE 9-20-05

# LHM SURVEYING

4203 SCHOFIELD AVENUE  
SCHOFIELD, WI 54476  
PHONE (715) 359-2253

M-2913

## MARATHON COUNTY CERTIFIED SURVEY MAP

I, LaVerne H. Mosher, Registered Land Surveyor, hereby certify:

**That I have surveyed, divided and mapped Parcel 1 of Certified Survey Map Number 9819, recorded in Volume 40 of Certified Survey Maps, Page 42; located in the Southwest 1/4 of the Southwest 1/4 of Section 1, Township 28 North, Range 8 East, Town of Weston, Marathon County, Wisconsin, described as follows:**

Commencing at the Southwest corner of said Section 1, Township 28 North, Range 8 East; thence N 00° 57' 22"W along the West line of the Southwest 1/4 of said Section 1, 1324.72 feet to the Northwest corner of the Southwest 1/4 of the Southwest 1/4 of said Section 1; thence S 87° 34' 10"E along the North line of the said Southwest 1/4 of the Southwest 1/4 of Section 1, 33.06 feet to the East line of Lester Street, said point also being the point of beginning of the parcel to be described; thence continuing along the said North line of the Southwest 1/4 of the Southwest 1/4 of Section 1, 653.00 feet to the Northeast corner of the West 1/2 of the Southwest 1/4 of the Southwest 1/4 of said Section 1; thence S 00° 47' 02"E along the East line of the said West 1/2 of the Southwest 1/4 of the Southwest 1/4 of Section 1, 1294.67 feet to the North line of Kersten Road; thence N 87° 17' 53"W along the said North line of Kersten Road, 649.29 feet to the East line of Lester Street; thence N 00° 57' 22"W along the said East line of Lester Street, 1291.81 feet to the point of beginning.

**That I have made such survey, land division and plat by the direction of K & D Contractors, Inc.**

**That such plat is a correct representation of all exterior boundaries of the land surveyed and the subdivision thereof made.**

**That I have fully complied with the provisions of Chapter 236.34 of the Wisconsin Statutes, Chapter A-E 7 of the Wisconsin Administrative Code and the Subdivision Regulations of the County of Marathon, the Village of Weston and the Town of Weston in surveying, dividing and mapping the same.**

Dated this 10th day of March, 2005.

Revised this 19th day of July, 2005



*LaVerne H. Mosher*

LaVerne H. Mosher  
R. L. S. No. S-1188

Prepared by:  
LHM SURVEYING  
4203 SCHOFIELD AVENUE  
SCHOFIELD, WI 54476

SHEET 2 of 2 SHEETS

Prepared for:  
K & D Contractors, Inc.  
4507 Twin Pines Lane  
Weston WI 54476



1423491

K&D CONTRACTORS/14055

REGISTER'S OFFICE

RECD FOR REC'D

MARATHON CO, WI SEP 21 2005 1:08 PM

RECD IN VOL. 62 OF CSM PAGE 62

Michael J. Sydnor  
REGISTER

**MARATHON COUNTY CERTIFIED SURVEY MAP**  
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SURVEYING CONDUCTED IN APRIL, 2005.

[illegible]

**SCALE** 1" = 200'

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WEIGHING 2.670 LBS./LINEAL FT.
- — FOUND 1.315" O.D. IRON PIPE

REVIEWED AND APPROVED  
UNDER CHAPTER 16 OF  
TOWN STATUTES

BY M. L. [Signature]  
DATE 9-6-55

REVIEWED AND APPROVED  
UNDER CHAPTER 74 OF  
VILLAGE ORDINANCE

BY Al Brun  
DATE 9-20-05

# L.H.M. SURVEYING

APPROVED FOR RECORDING  
UNDER THE TERMS OF THE  
MARATHON CO. LAND DIVISION  
REGULATIONS

BY [Signature]  
DATE September 20, 2008  
MARATHON COUNTY CONSERVATION.

